

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION -- TOLEDO**

MELISSA SUSAN WIRTZ
3609 Songwood Circle
Huron, OH 44839,

PLAINTIFF,

v.

REPUBLIC SERVICES, INC.
c/o CT Corporation System
3800 N. Central Avenue, Suite 460
Phoenix, AZ 85012

and

REPUBLIC SERVICES OF OHIO
TRANSPORTATION, LLC
c/o CT Corporation System
4400 Easton Commons Way
Columbus, OH 43219

and

MARCUS ALLEN MCCLAIN
132 N. Hester Street
Norwalk, OH 44857,

DEFENDANTS.

CASE NO. 3:22-cv-1059

JUDGE

COMPLAINT

(jury demand endorsed herein)

Now comes Plaintiff Melissa S. Wirtz, by and through undersigned counsel, and for her Complaint states as follows:

THE PARTIES

1. Plaintiff Melissa S. Wirtz is a 23-year old Ohio resident who resides at 3609 Songwood Circle, Huron, Ohio 44839.

2. Defendant Republic Services, Inc., is a corporation organized under the laws of the State of Delaware with its principal place of business at 18500 North Allied Way, Phoenix, Arizona 85054.
3. Defendant Republic Services of Ohio Transportation, LLC, is a foreign corporation organized under the laws of the State of Delaware with its principal place of business at 18500 North Allied Way, Phoenix, Arizona 85054.
4. Defendant Marcus Allen McClain is an adult individual with a last known address of 132 N. Hester Street, Norwalk, Ohio 44857. Upon information and belief, at all times relevant hereto, Defendant McClain was an employee, agent, and/or servant of Defendants Republic Services, Inc., and Republic Services of Ohio Transportation, LLC (hereinafter jointly referred to as “Republic Services”) and was operating the subject commercial motor vehicle on behalf of Republic Services.

JURISDICTION

5. This Honorable Court has jurisdiction with respect to this lawsuit pursuant to 28 U.S.C. § 1332, in that diversity of citizenship exists between all the parties and the amount in controversy exceeds \$75,000.00.

VENUE

6. Venue is proper in this District and Division under 28 U.S.C. § 1391(b)(2), in that the tortious conduct at issue occurred in this District and Division.

INTRODUCTION

7. This is a personal injury action brought by Melissa Wirtz for permanent, life-changing injuries and damages she sustained arising from a truck versus motorcycle crash that occurred in the Township of Townsend, Sandusky County, on May 13, 2022.

8. On May 13, 2022, at approximately 1:57 p.m., Ms. Wirtz was lawfully operating a 2005 Harley Davidson motorcycle eastbound on SR 412 toward the intersection with CR 294. She had the right of way and did not have any traffic control devices or signs controlling her lane of travel.
9. At the same place and time, Defendant McClain was operating a 2019 Mack Truck LR northbound on CR 294 towards the intersection with SR 412. Defendant McClain had a stop sign controlling his lane of travel.
10. At all times relevant hereto, Defendant McClain was acting within the course and scope of his employment and/or agency with Republic Services, and furthermore, at all times relevant hereto, was the permissive operator of a commercial motor vehicle owned, rented, operated, controlled, maintained, and/or managed by Republic Services.
11. Suddenly and without warning, Defendant McClain entered the intersection, through the stop sign, at the same time that Ms. Wirtz was lawfully entering the intersection. Ms. Wirtz violently collided with the side of the Mack truck and was ejected from her motorcycle.
12. As a result of the collision, as well as the negligence, carelessness, and recklessness of the Defendants, as set forth more fully below, Ms. Wirtz sustained catastrophic and life-altering injuries, including a shattered pelvis, a shattered left wrist, multiple back fractures, severe internal bleeding, and several orthopedic injuries.

COUNT I
NEGLIGENCE, VICARIOUS LIABILITY – ALL DEFENDANTS

13. The preceding paragraphs are hereby realleged as if fully restated herein.
14. The severe injuries sustained by Plaintiff were a direct and proximate result of the negligence, carelessness, and recklessness of Defendant McClain, who was acting within

the course and scope of his agency and/or employment with Republic Services generally, and in the following particulars:

- a. Causing, allowing, and/or permitting the aforementioned 2019 Mack Truck LR to enter the intersection through a stop sign;
 - b. Failing to control the 2019 Mack Truck LR that would have caused, allowed, and/or permitted Defendant McClain to be able to stop, slow, and/or turn the 2019 Mack Truck LR, prior to entering the intersection;
 - c. Failing to manage the space around his vehicle;
 - d. Failing to keep a proper lookout;
 - e. Failing to judge the closeness of the Plaintiff's motorcycle;
 - f. Failing to maintain an assured clear distance ahead of his vehicle;
 - g. Failing to take due and proper cognizance of existing traffic conditions, including but not limited to the slowed and/or stopped vehicles ahead;
 - h. Operating the aforementioned 2019 Mack Truck LR at an excessive rate of speed given the circumstances;
 - i. Failing to promptly and properly apply the brakes and/or other stopping mechanisms of the 2019 Mack Truck LR;
 - j. Failing to operate the aforementioned 2019 Mack Truck LR free from distractions;
 - k. Operating the aforementioned 2019 Mack Truck LR while fatigued and/or otherwise impaired and/or affected by his physical condition;
 - l. Violating the laws and statutes of the State of Ohio regarding the safe operation of vehicles; and
 - m. In such other and further wrongful manner as will be demonstrated at trial.
15. Defendant McClain's negligent, careless, and reckless conduct in the care, management, and/or operation of his vehicle, created a hazard for the motoring public, including Plaintiff, and was the direct and proximate cause of the collision in which Plaintiff was injured.

16. At all times relevant hereto, Defendant McClain was an employee, agent, and/or servant of Republic Services and was acting in the course and scope of his agency and/or employment with Republic Services, who is responsible for Defendant McClain's conduct under the principles of *respondeat superior*.
17. As a direct and proximate result of the aforesaid negligence, carelessness, and recklessness by Defendant McClain, who was working in the course and scope of his agency and/or employment with Republic Services, Plaintiff was caused to suffer severe and permanent injuries, including but not limited to: a shattered pelvis, a shattered left wrist, multiple back fractures, severe internal bleeding, and several orthopedic injuries, as well as a shock to her entire nervous and physical systems causing pain and suffering and causing her an inability to engage in her usual activities.
18. As a further direct and proximate result of the above-mentioned acts of negligence, carelessness, and recklessness by the Defendants, Plaintiff was caused to seek necessary medical care and attention, including multiple surgical procedures, and in all likelihood, will be forced to incur further medical care and expenses in the indefinite future, all to her financial expense.
19. As a further direct and proximate result of the above-mentioned acts of negligence, carelessness, and recklessness by the Defendants, Plaintiff was caused to suffer substantial pain and suffering, mental anguish, terror, fright and emotional distress.
20. As a further direct and proximate result of the above-mentioned acts of negligence, carelessness, and recklessness by the Defendants, Plaintiff was caused to suffer permanent and substantial physical deformities to her body, such that the non-economic damage caps in R.C. § 2315.18 do not apply.

21. As a further direct and proximate result of the above-mentioned acts of negligence, carelessness, and recklessness by the Defendants, Plaintiff's ability to live free from pain, discomfort and disability has been permanently impaired.

22. As a further direct and proximate result of the above-mentioned acts of negligence, carelessness, and recklessness by the Defendants, Plaintiff will suffer permanent vocational loss, and her ability to earn sufficient earnings and wages into the future has been compromised, if not eliminated, all to her financial detriment.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and/or severally, individually and/or collectively, for an amount more than Twenty-Five Thousand Dollars (\$25,000.000), together with interest, costs, attorney's fees, and other such and further relief as this Court deems just and equitable.

COUNT II
DIRECT LIABILITY AGAINST DEFENDANTS REPUBLIC SERVICES, INC. AND
REPUBLIC SERVICES OF OHIO TRANSPORTATION, LLC

23. The preceding paragraphs are hereby realleged as if fully restated herein.

24. The severe and permanent injuries sustained by Plaintiff were a direct and proximate result of the negligence and carelessness of Republic Services generally, and in the following particulars:

- a. Failing to instruct, train, educate, observe and supervise their officers, agents, servants and/or employees, including Defendant McClain;
- b. Failing to establish and/or enforce procedures to ensure motor vehicles, including the aforementioned 2019 Mack Truck LR, that are operated by their officers, agents, servants and/or employees, including Defendant McClain, are operated in a safe manner;

- c. Failing to train their officers, agents, servants and/or employees, including Defendant McClain, to operate motor vehicles, including the aforementioned 2019 Mack Truck LR, in a safe manner;
- d. Failing to properly supervise the operations and/or management of their officers, agents, servants and/or employees, including Defendant McClain;
- e. Causing, allowing, and/or permitting their agent/employee McClain to operate the aforementioned 2019 Mack Truck LR when they knew or should have known that Defendant McClain would not do so in a safe and careful manner;
- f. Failing to establish and/or enforce safe and reasonable guidelines, regulations and/or instructions regarding the operation of motor vehicles, including the aforementioned 2019 Mack Truck LR, by their officers, agents, servants and/or employees, including Defendant McClain;
- g. Failing to prohibit operators of their motor vehicle units, including Defendant McClain, from engaging in activities that cause distraction while operating motor vehicles;
- h. Failing to establish policies and procedures to prevent operators of their motor vehicle units, including Defendant McClain, from engaging in distracted driving;
- i. Failing to review and properly implement their own policies and procedures that were created relative to the manner in which motor vehicles under their control were to be operated, when they knew or should have known that failure to do so would create an unreasonable risk to the life of individuals such as the Plaintiff;
- j. Violating the laws and statutes of the State of Ohio regarding the safe operation of motor vehicles, including training of vehicle operators, supervision of vehicle operators, and management of vehicle operators; and
- k. In such other and further wrongful manner as will be demonstrated at trial.

25. As a direct and proximate result of the above-mentioned negligence, carelessness, and recklessness of Republic Services in the hiring, training, supervising, dispatching, and/or retaining of Defendant McClain, Plaintiff sustained severe injuries, pain and suffering, mental

anguish, terror, freight, emotional distress, and other losses for which she is entitled to recover damages for, in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Republic Services, jointly and/or severally, individually and/or collectively, for an amount more than Twenty-Five Thousand Dollars (\$25,000.000), together with interest, costs, attorney's fees, and other such and further relief as this Court deems just and equitable.

Respectfully submitted,

/s/ Jeffrey M. Heller

Jeffrey M. Heller, Esq. (0087795)
NUREMBERG, PARIS, HELLER &
MCCARTHY CO., LPA
600 Superior Avenue E., Suite 1200
Cleveland, OH 44114
P: 216.621.2300
F: 216.771.2242
E: jheller@nphm.com

and

/s/ Nicholas G. Haddad

Nicholas G. Haddad, Esq. (0097496)
Law Offices of Susan M. Stephanoff, LLC
700 W. St. Clair Ave., Suite 200
Cleveland, Ohio 44113
Phone: (216) 696-0440
Email: nick@clevelandcriminal.com

Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury for all issues raised herein.

Respectfully submitted,

/s/ Jeffrey M. Heller

Jeffrey M. Heller, Esq. (0087795)
NUREMBERG, PARIS, HELLER &
MCCARTHY CO., LPA

Counsel for Plaintiff